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Baxter Healthcare Corporation

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

CHRISTIAN HOLINKA,

Plaintiff,

v.

BAXTER HEALTHCARE
CORPORATION, FISHER SCIENTIFIC
INTERNATIONAL, INC., VWR
INTERNATIONAL, INC., and UNIVAR
USA, INC.,

Defendants.

ECF CASE

Civil Action No. 07-8019 (SHS)

**DECLARATION PURSUANT TO
28 U.S.C. § 1446(a) AND
LOCAL CIVIL RULE 81.1(b)**

TIMOTHY J. FRASER, being of full age, declares as follows:

1. I am an attorney at law of the State of New York, admitted to the Southern District of New York, and associated with the law firm of Drinker Biddle & Reath LLP, attorneys for defendant Baxter Healthcare Corporation (alleged to be a successor in interest to American Hospital Supply Corp. and American Scientific Products) ("Baxter"). I have personal knowledge of the facts set forth herein.

2. This Declaration is submitted pursuant to 28 U.S.C. § 1446(a) and Local Civil Rule 81.1(b).

3. The pleadings, motions and orders listed below were filed with the New York Supreme Court, County of New York, Index No. 114120, and/or served on Baxter before this case was removed to the United States District Court, Southern District of New York, on September 12, 2007. True and complete copies of the below documents are attached to this Declaration.

Ex. 1	9/29/06 * ¹	Plaintiff – Summons and Verified Complaint
Ex. 2	9/29/06 *	Plaintiff – Application for Index Number
Ex. 3	10/12/06 *	Cleaver-Brooks – Acknowledgement of Receipt
Ex. 4	10/19/06 *	Lennox Industries – Verified Answer and Cross-Claims
Ex. 5	11/9/06 *	Rapid-American Corporation – Acknowledgment of Service
Ex. 6	11/13/06 *	Corning – Notice of Bankruptcy
Ex. 7	11/20/06 *	VWR International / Univar USA – Stipulation for Extension of Time To Answer or Otherwise Plead to the Complaint
Ex. 8	11/27/06 *	Baxter Healthcare – Verified Answer and Affirmative Defenses
Ex. 9	11/30/06 *	Kewaunee Scientific – Verified Answer
Ex. 10	11/30/06 *	Kewaunee Scientific – Affidavit of Service for verified answer
Ex. 11	12/5/06 *	Baxter International – Request for Judicial Intervention
Ex. 12	12/5/06 *	Baxter International – Notice of Motion To Dismiss
Ex. 13	12/13/06 *	VWR International / Univar USA – Notice of Appearance

¹ * = Documents copied from the file room at the New York Supreme Court, New York County. All other documents originated from the files maintained by Drinker Biddle & Reath LLP on behalf of defendant Baxter Healthcare Corporation.

Ex. 14	12/13/06 *	VWR International – Verified Answer, Affirmative Defenses, Answer to Crossclaims and Crossclaims
Ex. 15	12/13/06 *	Univar USA – Verified Answer, Affirmative Defenses, Answer to Crossclaims and Crossclaims
Ex. 16	12/15/06 *	Manor Care Health Services – Answer
Ex. 17	1/4/07 *	Beckman Coulter – Verified Answer
Ex. 18	1/29/07 *	Baxter International – Notice of No-Opposition Summary Judgment Motion
Ex. 19	1/31/07 *	Baxter International – Notice of Withdrawal of Motion To Dismiss
Ex. 20	1/31/07 *	Rheem Manufacturing – Answer to Verified Complaint
Ex. 21	2/5/07 *	Rheem Manufacturing – Acknowledgment of Service
Ex. 22	2/13/07 *	VWR International / Univar USA – Motion for admission <i>pro hac vice</i> of David F. Abernethy, Esq. and Bryan R. Sgrignoli, Esq.
Ex. 23	3/27/06 *	Order of admission <i>pro hac vice</i> for David F. Abernethy, Esq. and Bryan R. Sgrignoli, Esq.
Ex. 24	3/29/07 *	Order granting summary judgment to Baxter International
Ex. 25	4/10/07 *	A.W. Chesterton – Motion for Summary Judgment
Ex. 26	4/25/07	Fisher Scientific – Standard Answer #1 to Weitz & Luxenberg Standard Asbestos Complaint for Personal Injury No. 7 and Acknowledgment of Service
Ex. 27	5/25/07 *	Baxter Healthcare – Motion for <i>pro hac vice</i> admission of Brenda N. Buonaiuto, Esq.
Ex. 28	6/7/07 *	Order granting summary judgment to A.W. Chesterton
Ex. 29	6/8/07 *	VWR International – Substitution of Counsel
Ex. 30	6/8/07 *	Univar USA – Substitution of Counsel
Ex. 31	6/25/07	Plaintiff – Motion for a joint trial

Ex. 32	7/16/07	Lab Supply Defendants ² – Opposition to plaintiff's motion for a joint trial
Ex. 33	7/17/07	Robert A. Keasby – Opposition to plaintiff's motion for a joint trial
Ex. 34	7/17/07	Union Carbide and Amchem – letter notification that Affirmation and Memorandum of Law in Opposition to plaintiff's motion for a joint trial was filed
Ex. 35	7/19/07	Kaiser Gypsum – Opposition to plaintiff's motion for a joint trial
Ex. 36	8/1/07	Fisher Scientific – Motion for <i>pro hac vice</i> admission of Alan I. Dunst, Esq.
Ex. 37	8/7/07	Mannington Mills and Fisher Scientific – Order to Show Cause for <i>pro hac vice</i> admission of Marc S. Gaffrey, Esq.
Ex. 38	8/15/07 *	Order of admission <i>pro hac vice</i> for Brenda N. Buonaiuto, Esq.
Ex. 39	8/22/07	Order of admission <i>pro hac vice</i> for Michael J. Block, Esq.
Ex. 40	8/22/07	Plaintiff – Motion <i>in limine</i> to exclude evidence of “dose reconstruction” and “exposure assessment”
Ex. 41	8/22/07	ManorCare Health Services – Motion <i>in limine</i> to preclude evidence that seeks to impose liability for laboratory products supplied after July 31, 1976
Ex. 42	8/22/07	ManorCare Health Services – Motion <i>in limine</i> to preclude evidence relating to Precision Cosmet Company, Inc.
Ex. 43	8/22/07	Lab Supply Defendants – Motion <i>in limine</i> to preclude plaintiff's experts, Drs. Moline and Strauchen, from testifying that the Bunsen burner pads and heat mittens at issue caused plaintiff's mesothelioma

² “Lab Supply Defendants” refers, collectively, to defendants Baxter Healthcare Corporation, Fisher Scientific International, Inc., ManorCare Health Services, Inc., VWR International, Inc. and Univar USA, Inc. Defendant ManorCare Health Services, Inc. reached a settlement agreement with Plaintiff before this case was removed to the Southern District of New York.

Ex. 44	8/22/07	Lab Supply Defendants – Motion <i>in limine</i> to preclude evidence regarding the presence of defendants’ catalogs in the laboratories where plaintiff worked or studied
Ex. 45	8/22/07	Lab Supply Defendants – Motion <i>in limine</i> to preclude evidence of epidemiological studies involving different types of asbestos or greater levels of exposure
Ex. 46	8/22/07	Lab Supply Defendants – Motion <i>in limine</i> to preclude reference to “asbestos products”
Ex. 47	8/22/07	Lab Supply Defendants – Motion <i>in limine</i> to preclude reference to the Bunsen burner pads and heat mittens in issue as “Defendant’s Products”
Ex. 48	8/22/07	Lab Supply Defendants – Motion <i>in limine</i> to preclude testimony of Barry Castleman, D.Sc. and Douglas Pohl, M.D.
Ex. 49	8/22/07	Lab Supply Defendants – Motion <i>in limine</i> to preclude reference to defendants generally as “asbestos defendants,” “asbestos companies” or “conspirators”
Ex. 50	8/22/07	Lab Supply Defendants – Omnibus Motion <i>in limine</i>
Ex. 51	8/22/07	Union Carbide – Motion <i>in limine</i> to require 48-hour pre-disclosure of documents and witnesses
Ex. 52	8/22/07	Union Carbide – Motion <i>in limine</i> for disclosure of information regarding previous settlements
Ex. 53	8/22/07	Union Carbide – Motion <i>in limine</i> to preclude evidence regarding Union Carbide’s corporate structure of its relationship to the Dow Chemical Company
Ex. 54	8/22/07	Union Carbide – Motion <i>in limine</i> to exclude all references to industrial/chemical accidents
Ex. 55	8/22/07	Union Carbide – Notice of joinder in all co-defendants’ motions <i>in limine</i> and oppositions to plaintiff’s motions <i>in limine</i>
Ex. 56	8/22/07	Union Carbide – Omnibus Motion <i>in limine</i>

- Ex. 57 8/22/07 Union Carbide – Motion *in limine* to exclude evidence of the Health Conditions or Medical Records of any Union Carbide King City asbestos workers without testimony from a qualified medical expert that the health condition is related to asbestos exposure
- Ex. 58 8/24/07 Baxter Healthcare – Motion for *pro hac vice* admission of David B. Sudzus, Esq.
- Ex. 59 8/30/07 * Manor Care Health Services – Affidavits of Service for *motion in limine* to exclude evidence or testimony seeking to impose liability for products supplied after July 31, 1976
- Ex. 60 8/30/07 * Manor Care Health Services – Affidavit of Service for *motion in limine* to exclude all evidence relating to Precision Cosmet Company, Inc.
- Ex. 61 8/30/07 * Manor Care Health Services – Affidavit of Service for defendants' joint motion *in limine* to preclude plaintiff's experts, Drs. Moline and Strauchen, from testifying that the Bunsen Burner Pads and heat mittens at issue caused plaintiff's mesothelioma
- Ex. 62 8/30/07 * Manor Care Health Services – Affidavit of Service for defendants' joint motion *in limine* to preclude evidence regarding the presence of Defendants' catalogs in the laboratories in which plaintiff worked or studied
- Ex. 63 9/4/07 Baxter Healthcare – Motion for *pro hac vice* admission of Donald F. Zimmer, Esq.
- Ex. 64 9/5/07 * Baxter Healthcare – Affidavit of Service for defendants' joint motion for Summary Judgment
- Ex. 65 9/5/07 * Baxter Healthcare – Affidavit of Service for defendants' joint motion *in Limine* to Preclude reference to the Products in Issue as "Asbestos Products"
- Ex. 66 9/5/07 * Baxter Healthcare – Affidavit of Service for defendants' joint motion *in limine* to preclude plaintiff from introducing evidence of epidemiological studies involving different types of asbestos or greater levels of exposure

Ex. 67	9/7/07 *	Order of Admission <i>Pro Hac Vice</i> for David B. Sudzus, Esq.
Ex. 68	9/10/07	Plaintiff – Motion for Spoliation Sanctions
Ex. 69	9/10/07	Plaintiff – Opposition to Lab Supply Defendants' motion to exclude testimony of Barry Castleman, D.Sc. and Douglas Pohl, M.D.
Ex. 70	9/10/07	Plaintiff – Opposition to Lab Supply defendants' motions <i>in limine</i> to preclude Drs. Moline and Strauchen from testifying as to causation and to exclude evidence of epidemiological studies
Ex. 71	9/10/07	Plaintiff – Affirmation in further support of motion <i>in limine</i> to preclude evidence of “dose reconstruction” and “exposure assessment”
Ex. 72	9/10/07	Lab Supply Defendants – Opposition to plaintiff's motion <i>in limine</i> to preclude evidence of “dose reconstruction” and “exposure assessment”
Ex. 73	9/11/07	VWR International / Univar USA – Affirmation joining in certain motions <i>in limine</i> filed by Union Carbide
Ex. 74	9/11/07	Fisher Scientific – Affirmation joining in opposition papers filed by other defendants
Ex. 75	9/12/07 *	Baxter Healthcare – Notice of Filing of Notice of Removal

4. The foregoing statements made by me are true. I am aware that if any of these statements are willfully false, I may be subject to punishment.

/s/ Timothy J. Fraser
Timothy J. Fraser

Dated: September 28, 2007

CERTIFICATE OF SERVICE

TIMOTHY J. FRASER, being of full age, declares as follows:

1. I am an attorney at law of the State of New York, admitted to the Southern District of New York, and associated with the law firm of Drinker Biddle & Reath LLP, attorneys for defendant Baxter Healthcare Corporation (alleged to be a successor in interest to American Hospital Supply Corp. and American Scientific Products) ("Baxter"). I have personal knowledge of the facts set forth herein.

2. On September 28, 2007, I caused Baxter's Declaration Pursuant to 28 U.S.C. § 1446(a) and Local Civil Rule 81.1(b) to be filed electronically with the Southern District of New York and to be served by first class mail upon:

James Long, Esq.
Weitz & Luxenberg
180 Maiden Lane
New York, New York 10038-4925

Kristy K. Lyons, Esq.
Hoagland, Longo, Moran, Dunst & Doukas, LLP
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Carol M. Tempesta, Esq.
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530 Saw Mill River Road
Elmsford, NY 10523

3. The foregoing statements made by me are true. I am aware that if any of these statements are willfully false, I may be subject to punishment.

/s/ Timothy J. Fraser
Timothy J. Fraser

Dated: September 28, 2007